Reserved Judgment

IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal From Order No. 1068 of 2001
(Old No. 829 of 1983)

Oriental Fire and General Insurance Co.
Ashley Hall, Dehradun
Through the Divisional Manager,
Oriental Fire and General Insurance,
Allahabad.

..... Appellant

Versus

1. Smt. Shanti Devi (Deceased)
   Widow of late Udai Singh
2. Shankar Singh
3. Virendra Singh
   minor sons of late Udai Singh
4. Km. Salochana
5. Km. Bimla
   Minor daughters of late Udai Singh

All the four minors under the guardianship
of their mother and natural guardian
Smt. Shanti Devi,
All R/o Chandbagh, Doon School,
Quarter No. 26, Dehradun.

..... Claimants – Respondents

6. Gurcharan Singh S/o Pritam Singh
   C/o Malwa Bus Service, Moga, Punjab.
7. Joga Singh S/o Harwant Singh (Driver)
   R/o 1/C, Hardwar Road, Dehradun.

..... Respondents

Mr. Prabhat Pandey, learned counsel for the appellant.
Mr. D.C.S. Rawat, Advocate holding brief of Mr. Lokendra Dobhal, learned counsel for the claimants – respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 110-D of the Motor Vehicles Act, 1939, is directed against the judgment and award dated 20.08.1983, passed in M.A.C. Case No. 29

of 1978, by learned Motor Accidents Claims Tribunal / Addl. District Judge (Special Judge), Dehradun, whereby compensation to the tune of Rs. 60,000/- with 9% interest per annum thereon has been awarded in favour of the claimants.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Brief facts of the case are that, on 01.01.1978, at about 5:30 P.M., Udai Singh husband of the claimant - respondent Smt. Shanti Devi, was going with Ram Chandra from village Tunwala to Dehradun. Ram Chandra was padding the bicycle and Udai Singh was sitting behind him on the carrier of the bicycle. Suddenly, a truck bearing registration number P.U.W. / 3066, owned by respondent Gurcharan Singh, which was being driven rashly and negligently by its driver, respondent Joga Singh, came from the opposite direction and dashed at the bicycle. In the accident, Udai Singh suffered injuries and got unconscious. The injured (Udai Singh) was immediately taken to hospital where he died. His widow and children had filed claim petition before the Tribunal for compensation to the tune of Rs. 74,000/-.

4) Respondent Joga Singh did not file his written statement, but respondent Gurcharan Singh, owner of the truck and appellant Oriental Fire and General Insurance Company, contested the claim petition before the Tribunal by filing their separate written statements. In the written statement of respondent Gurcharan Singh, it is stated that

the driver of the truck was neither rash nor negligent, in driving the truck. It is further stated that Udai Singh (deceased) himself fell down from the bicycle and sustained injuries. The Oriental Fire and General Insurance Company (present appellant) in their written statement denied that truck bearing registration No. P.U.W. / 3066 was involved in the accident. It further denied, that driver of the truck in question, was rash and negligent. By way of amendment, it is further pleaded by the said Insurance Co. that Gurcharan Singh had transferred the truck to one Trilochan Singh in disregard to the provisions of Commercial Vehicle (Distribution and Control) Order, 1963, and as such, the policy of the insurance was violated and, it cannot be said that Joga Singh was employee of Gurcharan Singh.

5) The Tribunal, after perusing the pleadings of the parties, framed following issues:

i) *Whether, the accident took place due to the rash and negligent act on the part of the driver of the vehicle registration No. P.U.W. / 3066, owned by Gurcharan Singh?*

ii) *Whether, Oriental Fire and General Insurance Co. is not liable to pay the compensation, as alleged in their written statement?*

iii) *Whether, the accident took place, as alleged in para 17 and 18 of the written statement of respondent Gurcharan Singh?*

iv) *To what relief, if any, the claimants are entitled?*

v) *Whether, the claimants are the sole legal representatives of the deceased?*

6) After recording the evidence and hearing the parties, the Tribunal found that the accident did take place, as alleged by the claimants due to the rash and negligent driving on the part of the driver of truck registration No. P.W.W. / 3066, in which Udai Singh got injured and later died of the injuries. It further found that, since, the vehicle at the time of accident, was ensured with the Oriental Fire and General Insurance Company, it is liable to make the payment of compensation to the claimants. On issue No. 5, the Tribunal found that the claimants are the dependents and legal heirs of the deceased and they are entitled to the compensation. As to the amount of compensation, the Tribunal found that the claimants suffered financial loss of Rs. 270/- per month (Rs. 3,240/- per annum) on account of the death of deceased Udai Singh, who was aged 40 years, at the time of the accident. In view of said fact, applying the multiplier of 20, under the old Motor Vehicles Act, amount of financial loss was assessed at Rs. 64,800/-, out of which Rs. 4,800/- was deducted for payment of lump sum amount to the claimants. As such, total sum of Rs. 60,000/- was awarded as compensation in favour of the claimants, by the Tribunal. Aggrieved by which, this appeal has been preferred by the Oriental Fire and General Insurance Company, before the Allahabad High Court in the year 1983, from where it has been received by transfer to this court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

7) After hearing the learned counsel for the parties in this appeal, and going through the record of the Tribunal, this Court found that the finding of the Tribunal as to the loss of earning to the claimants at Rs. 270/- per month, is a correct one. P.W. 2 Narendra Singh, a clerk of Doon School, where Udai Singh (deceased) was working has given the details of the salary, the deceased used to earn from the School. P.W. 1 Shankar Singh (son of the deceased) has stated that his father was cook in the Doon School and the claimants were dependent on him. P.W. 3 Vijay Singh is the witness of the accident, who has stated that Joga Singh was driving the vehicle bearing registration No. P.U.W. / 3066 rashly and negligently, at the time of the accident when it hit the bicycle, which was being paddled by Ram Chandra and in the carrier of said bicycle Udai Singh was travelling. This witness has further stated that after the accident, Udai Singh fell down and due to the injuries sustained in the accident, he started vomiting blood and was taken to the Hospital, where he died. As such, the statement of this witness proved the fact that the accident had occurred due to the rash and negligent driving on the part of the driver of the truck having registration No. P.U.W. / 3066, owned by Gurcharan Singh. P.W. 4 Ram Chandra, who was paddling the bicycle, has corroborated the statement of P.W. 3. Vijay Singh.

8) Learned counsel for the appellant drew attention of this Court to the statement of D.W. 1 R.C. Sharma, an employee of the appellant company, who has stated that as per the paper No. 44 –C (photo copy of the power of attorney) it is clear that respondent Gurcharan Singh has

authorized one Trilochan Singh to ply the vehicle, to make the payments and to transfer the property, the truck registration No. P.U.W. / 3066. However, the appellant failed to show how by this document the liability of the Insurance Company gets diluted in respect of the loss suffered by the claimants in the accident, due to the rash and negligent driving on the part of the driver of the truck, involved in the accident. It is not denied that the vehicle was ensured with the appellant company on the date of the accident. The paper No. 44 –C only shows that, since, Gurcharan Singh was going abroad, as such, he executed power of attorney in favour of Trilochan Singh to do all needful in respect of the vehicle. By mere execution of such document, the appellant Insurance Company doesn't get absolved of the liability to pay the compensation. No authority of the Apex court or of any other High Court was shown to me, wherein it is mentioned that in such a case, Insurance Company is exempted from making the payment of compensation on behalf of the ensured.

9) For the reasons as discussed above, this Court does not find any error of fact or that of law in the impugned award passed by the Tribunal. Accordingly, the appeal is liable to be dismissed. The same is dismissed. The interim stay order dated 21.11.1983 stands vacated. (All other pending applications in this appeal also stand disposed of).

(Prafulla C. Pant, J.)

Dt. 29th August, 2006.
H. Negi